HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

Writ Appeal No.1332 of 2006

Between

V.Nookaraju and another ..Appellants

AND

T h e Commissioner (ROM), Office of Chief Commissioner of Land Administration and others ..Respondents

:: JUDGMENT ::

Counsel for the appellants Smt.D.Lalitha Prasad

Counsel for respondents Government Pleader for Revenue

26.12.2006

Per G.S.Singhvi, CJ.

Having failed to persuade the learned Single Judge to quash

orders dated 23.2.2004, 16.10.2004 and 16.6.2006 passed by Joint Collector and Settlement Officer, Visakhapatnam (respondent No. 3), Commissioner and Director of Settlements, Andhra Pradesh (respondent No. 2) and the Commissioner (ROM) in the office of Chief Commissioner of Land Administration, Andhra Pradesh, Hyderabad (respondent No.1) respectively in the matter of grant of ryotwari patta under Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 (for short, 'the Act') read with Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Grant of Ryotwari Patta Rules, 1973 (for short, 'the Rules'), the appellants have preferred this appeal under Clause 15 of the Letters Patent.

The appellants claim to be great grandsons of late Vasupalli Musalamma, who is said to have been inducted into possession of agricultural dry land measuring 74 cents comprised in Revenue Survey No.294/5 situated in Kapuluppada Village of Bheemunipatnam Mandal, Visakhapatnam District. On 17.6.2003, the appellants filed an application under Section 11(a) of the Act for grant of ryotwari patta. By a detailed order dated 23.2.2004, respondent No. 3 dismissed the application by holding that the petition had been filed after a lapse of 44 years from the date of introduction of settlement rates in the village and no credible explanation has been given for this long delay. Revision filed by the appellants under Section 5(2) of the Act was dismissed by respondent No. 2 vide his order dated 16.10.2004. Further revision filed by the appellants under Section 7(d) of the Act was dismissed by respondent No.1 on 16-6-2006. Respondent No. 1 relied on order dated 15.3.2005 passed by this Court in Writ Petition No. 25504 of 1995 and batch and held that the rejection of their application for grant of ryotwari patta does not suffer from any infirmity. The relevant extracts of the order passed by respondent No. 1 read as under:

> "In the present case the petitioner has not produced any evidence showing how fore fathers of the applicant were

indicated into position by Maharaja of Vizianagaram and how they have continued in possession there after. The only evidence petitioner has produced in his favour may be the entries in the SLR Records where it was alleged by him that his grandmother's name existed against Sy.No.294/5 showing her possession of this Sy.No. to an extent of Ac.0.74 cts in the year 1954. All other records are alleged to have got destroyed in the fire accident.

The Settlement Officer and Joint Collector, Visakhapatnam has considered the aspect of limitation and came to the conclusion that the petitioner has not produced any good and sufficient reasons for condonation of delay and on that ground, among others, he has dismissed the claim of the petitioner as time bared. The Director of Settlements, A.P. Hyderabad has not also interfered with the orders of Settlement Officer and Joint Collector, Visakhapatnam on the same ground.

The primary responsibility for condonation of delay lies with the Settlement Officer before entertaining the application u/s 11(A) of State Estate Abolition Act. Once he has come the conclusion that there are not good and sufficient reasons for condoning the delay and dismissing the application on that grounds, such finding can be set-aside only if the petitioner is able to produce additional evidence before appellate authority to get such finding set aside. The petitioner is not able to produce any additional evidence before this authority also. Therefore I do not find any reason to interfere with the findings of the Settlement Officer as well as the Director of Settlement, A.P. Hyd and accordingly, I dismiss the Revision Petition."

The learned Single Judge referred to the relevant rules and held that the conclusions reached by the Settlement Officer and the second revisional authority do not suffer from any legal infirmity. He further held that failure of the petitioner to produce any evidence that they were in possession of the land prior to coming into force of the Act was sufficient to decline their claim for grant of ryotwari patta.

Learned counsel for the appellants relied on the judgments of this Court in **Director of Settlements, Hyd. v. Neerupaka Rama Krishna**[1], **Chaatrati Mallikarjun Rao v. Government of Andhra Pradesh**[2] and the judgment of the Supreme Court in

N.Balakrishnan v. M.Krishna Murthy[3] and argued that in the absence of any prescription of limitation under Section 11(a) of the Act, the authorities could not have relied on the period of limitation prescribed under Rule 2(4) of the Rules and dismissed the application filed by the appellants. He then submitted that even if the application was treated as belated, respondent No.3 should have condoned the delay by exercising the powers under second proviso to Rule 2(4) of the Rules because, the appellants are illiterate persons and are not at all conversant with the statutory provisions which have bearing on their right to get ryotwari pattas by filing application under Section 11(a) of the Act.

We have considered the submissions of the learned counsel for the appellants and also gone through the judgments relied on by her. In our opinion, the appellant has failed to make out a case for interference with the order of the learned Single Judge. In the writ petition filed by them, the appellants did not challenge the vires of Rule 4 (2). Therefore, after taking into consideration the provisions of Section 22, the learned Single Judge rightly held that the application should have been made within 30 days from
2-7-1974 i.e. the date on which the Rules were published in Andhra Pradesh Gazette.

We are further of the view that the delay of 44 years cannot be counted from the date of enforcement of the Act and 29 years from the date of enforcement of the Rules cannot be condoned by accepting the spacious plea of the appellants that they are illiterate and ignorant about the relevant statutory provisions.

In **N. Balakrishnan v. M. Krishna Murthy** (supra), the Supreme Court dealt with the scope of Section 5 of the Limitation Act and laid down the following proposition:

> "Condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is

the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. In every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. The words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice."

In **Director of Settlements, Hyd. v. Neerupaka Rama Krishna** (supra), a Division Bench of this Court held that show cause notice issued for setting aside the patta granted to the petitioner on the premise that it was obtained by playing fraud cannot be quashed only on the ground of delay of 35 years.

In **Chatrati Mallikarjuna Rao v. Govt. of A.P.** (supra), a learned Single Judge held that the power of suo motu review cannot be exercised for reopening of the issue of grant of ryotwari patta and mere delay in making of application for grant of patta is not sufficient to deny patta to a person whose claim is genuine.

Except in the last mentioned case, there is no discussion on the subject whether an application made after lapse of more than two decades can be entertained for grant of ryotwari patta. In the last case also, the learned Single Judge did not directly discuss this issue, but only made a passing observation, which cannot be treated as law laid down by the Court.

With the above observation, the appeal is dismissed.

As a sequel to dismissal of the writ appeal, W.A.M.P.No.2825 is

also dismissed.

G.S.SINGHVI, CJ

C.V.NAGARJUNA REDDY, J

26-12-2006
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[1] 2001 (5) ALD 828
[2] 2001 (6) ALT 182
[3] (1998) 7 SCC 123